

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. 05-20001

U.S. COURT OF APPEALS  
**FILED**

JAN 21 2005

In Re: UNITED STATES OF AMERICA

Petitioner

CHARLES R. FULBRUGE III  
CLERK

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Petition for Writ of Mandamus to the  
United States District Court  
for the Southern District of Texas, Houston  
-----

ON PETITION FOR REHEARING EN BANC

(Opinion 1/12/05, 5 Cir., \_\_\_\_\_, P.3d \_\_\_\_\_)

Before JONES, HARKSDALE, and PRADO, Circuit Judges.

PER CURIAM:

(~~X~~) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P. and 5<sup>th</sup> Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (Fed. R. App. P. and 5<sup>th</sup> Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Edith H. Jones  
United States Circuit Judge

REHG-6a

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O R D E R ;

IT IS ORDERED that the respondent's motion to withdraw the  
mandate which was issued on January 12, 2005, is DENIED.

/s/ EDITH H. JONES  
EDITH H. JONES  
UNITED STATES CIRCUIT JUDGE

MOT-21